

Calais Development Review Board
Minutes September 2, 2020; 7 PM (via Zoom video call)

Present: Allyson Edward, Anne Winchester, Art Edelstein (Member), Barbara Butler, Barbara McAndrew, Barbara Weedon, Bill Davis, Brian Burns, Carolyn Morton, Catherine Lowther, Catherine Reed, Chris Miller, Christen Adresen, Clif Emmons, Cornelia Carey, Craig Line, David Schütz, Denise Wheeler (Member), Elizabeth Shedd, Fletcher Dean, Grant Fair, Greta Lowther, Hasso Ewing, Jamie Moorby, Jan Ohlsson, John Brabant, John McCullough, Judy Bingham, Judy Robert, Katie Reed, Larry Bush, Lesley Bean, Linda Schütz, Maggie Thompson, Margaret "Peg" Bowen (Member), Martha Deiss, Mary Jane Ohlsson, Meg Dawkins, Molly McCreedy, Naomi Reid, Nel Emlen, Nick Emlen, Oliva Gay, Paul Hannon, Paul Ohlsson, Richard Jenney, Richard Maizell, Ruth Porter, Ryan Edwards (Member), Sam Potter, Sarah Gallagher, Stephanie Kaplan (Member), Stephen Reynes, Toby Talbot, Walt Amses

Call to Order: The meeting was called to order at 7:06 PM.

Review of Ancel Design Review Submittal: The Chair announced that the meeting is in reference to permit application 2020-18, Janet Ancel and Steve Reynes (attending with attorney Michael Tarrant). Motions were filed to have this special meeting and the Chair identified the first order of business regards Craig Line having filed a motion to recuse two of the DRB members (Peg Bowen). She reviewed the events of this permit application and said she would not recuse herself. Art Edelstein was the other person asked to recuse himself. He announced he would not and that Craig Line's request is unsupported by the video of the July meeting. Attorney Michael Tarrant noted he filed the written comments outlining his clients' view and nothing that was said on the recoding indicated any bias whatsoever.

The Chair indicated the second order of business is whether a special meeting request was within the appeal period for Vermont Law, triggered by the date of decision made by the DRB. An interested person is to file an appeal with the environmental division within thirty days of the decision. Attorney Tarrant stated that Vermont law is that the date of the decision controls for the appeal period. The final signed permit is filed and contains the Town Clerk signature for having recorded the permit on July 22 (setting the appeal period ending date as August 21). (Craig Line submitted this appeal for reconsideration on August 27.)

Craig Line asked how a person would know the decision has been reached without receiving any notice of that decision. The first notice he received of a decision was from the Town Clerk on July 31, after having been stamped and recorded.

The Chair identified the third order of business: to reconsider by the DRB the issuance of a new decision on the application of Ancel and Reynes. Craig Line commented his displeasure that Board members need only decide if they do or do not wish to recuse themselves, and that their actions were biased. Attorney Tarrant replied that the available video of the July meeting has zero defamatory or insulting language used. Once the appeal period runs, there can be no direct or indirect challenge to a permit—true whether it was illegal or unconstitutional when issued. The matter at hand is strictly and solely in regard to the building permit (not the subdivision permit).

Elizabeth Shedd questioned whether a permit that didn't have authority to be issued would be void. Attorney Tarrant replied that without being contested during the thirty day appeal window, an issued permit is valid, and provided a 2003 example case that supports this. Elizabeth Shedd disagreed.

Stephanie Kaplan swore in those wanting to testify. She noted that permit processes can be very burdensome, and Mr. Line is exercising his rights. Motions for reconsiderations and motions for appeal have the same requirements in terms of timeliness under Vermont law. This Board was required to have this meeting and issue a written decision within ten days of Craig Line's motion (so the decision must be issued by Saturday), as advised by the Town's attorney. Attorney Tarrant objected that he doesn't agree reconsideration is allowed here; Stephanie Kaplan wished he had added this in his written comments. Stephanie Kaplan disclosed that after the DRB hearing, she spoke with Craig Line by phone about the process and sent him a copy of applicable regulations, and that she worked with Steve Reynes at Environmental Court years ago; she felt neither of these disclosures would impact her ability to make an unbiased decision.

Walt Amses asked if the DRB decides that the deadline was the deadline, why go into whether or not address the merits of the decision again? Craig Line pointed out that three members of the meeting this evening are former members of the DRB who have resigned since making decisions on this permit, and objected to their comments (including Walt Amses).

Mike Tarrant replied to Walt's suggestion: he proposed that alternative reasons could be given for denying the permit. Olivia Gay commented that a number of residents are submitting a letter, which she read aloud. She commented that it is confusing why the appeal ending date of August 21 did not end the question at hand. She asked the Board to make a decision tonight to let people know because although the subdivision application and permit application are separate, they have been looked upon as the same and put the owners in hardship if they cannot close on the sale of their house this Friday 9/4. The letter she read is to the Selectboard to encourage them to support the integrity of the issued permit, and asked that the Selectboard Chair step down from her position as Alternate on the DRB (due to conflict of interest). She reviewed all of the actions that Town has taken to make the situation right and noted Steve and Janet have had an impossibly hard time through this. Stephanie Kaplan noted that the letter will be put into the record.

John Brabant, acting in his role as a Selectboard member, noted that he sent a response to the writers of the letter Olivia Gay et al submitted. He became aware of process problems from Mr. Line, who asked that the Selectboard hear his concerns that the DRB (appointed by the Selectboard) did not act appropriately. As the Selectboard does for all citizens in town who want to appear before the Board, Mr. Line was included in the noticed agenda (there is no nefarious intent, and everybody is treated the same way). The Selectboard did hear Mr. Line's complaints about the process problems surrounding the Design Advisory Board, and in consultation with the Town Attorney, asked them if those concerns were legitimate. John Brabant explained that it would create a cloud on the decision of the DAB to leave those Open Meeting Law concerns unaddressed. The Selectboard took the initiative to require the DAB to go back to square one and hold another (noticed) public meeting and allow public comment and even render a decision. This was well carried out in one meeting by David Schütz and the "ship was righted again." This action supported the applicants in having a permit through a process carried out as prescribed under statute.

Stephanie Kaplan noted that this has no bearing on whether the decision of the DRB should be reconsidered. Craig Line noted his issue for reconsideration is based on evidence of bias of certain members and varies according to interpretation. He clarified he did not request anything of the Selectboard, and learned he would be on the Selectboard agenda when it was noticed; he appreciated that the Selectboard took the initiative of learning what violations to Open Meeting Law occurred. Attorney Tarrant commented that the VT Supreme Court has addressed the issue of bias in permit cases and discussed a published case which illustrates that even if there were bias (which he denies), there exists no underlying substantive challenge to the permit to be reconsidered with a new decision making body.

Stephanie Kaplan explained the DRB is going to deliberate on the issues of timeliness and if it determines the permit was filed timely, then on the reconsideration. The closing by contract (the sale of the applicants' house) is set for Friday 9/4.

Stephanie Kaplan on behalf of the DRB acknowledged on the record (to absolve any fears that the Reynes-Ancel closing attorney may have) that this is not a subdivision proceeding; we understand you got a subdivision permit and this is a zoning proceeding, separate from the subdivision. Stephen Reynes added that the warning for this DRB meeting identified the consideration to only include the design review, not the subdivision which is an administrative action and was approved.

Craig Line asked how many members there are total on the DRB: Peg Bowen, Ryan Edwards, Art Edelstein, Stephanie Kaplan; three alternates, Jan Ohlsson, Anne Winchester, Denise Wheeler. Four people are needed as a quorum. With Denise Wheeler serving as Alternate, five members are in attendance.

The Chair closed the special meeting at 7:03 pm and stated the Board will be making a written decision within the ten days of August 26. The Board will enter private deliberative session, authorized by State law for quasi-judicial bodies, and invited Clif Emmons to join them for technical support. Clif Emmons encouraged anyone who would like to receive a copy of the decision to email your contact information to a member of the DRB (peggylbowen@myaol.com; Margaret.bowen@vermont.gov).

Respectfully Submitted, Katie Lane-Karnas, 9/3/2020

Link to the relevant meeting documents: <https://drive.google.com/drive/folders/16QhuYOoQkqvVnEwySLGKt1c-h6ngU52?usp=sharing>